

REMARKS

The present Amendment is in response to the Office Action mailed February 8, 2005, in the above-identified application. Enclosed herewith is a Petition requesting a three-month extension of time for resetting the deadline for responding to the Office Action from May 8, 2005, to and including August 8, 2005.

In the Office Action, the Examiner noted that the claim for priority did not include a reference to application No. 09/906,123, filed July 16, 2001. In response, Applicants have amended paragraph 0001 of the specification as indicated above.

The Examiner also noted that the claim for priority did not include the proper filing date for application No. 10/223,148. In response, paragraph 0001 of the specification has been amended to change the filing date from August 19, 2002 to October 4, 2002.

In the present Amendment, Applicants have amended independent claims 1, 4 and 9, and dependent claims 2, 7 and 10. Support for the amendment of independent claims 1, 4 and 9 is found in the originally filed specification at, *inter alia*, drawing FIGS. 1b-1d, 2b-2d, 3b-3d and 4b-4d. Dependent claims 2, 7 and 10 were amended to make the claims more definite pursuant to 35 U.S.C. Section 112, second paragraph. Thus, Applicants respectfully assert that the amendment of claims 1-2, 4, 7 and 9-10 adds no new matter and is fully supported by the originally filed specification.

The Examiner rejected claims 1-13 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-8 of U.S. Patent No. 6,471,725; claim 4 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 11 and 22 of U.S. Patent No. 6,764,515; claims 9-13 under the judicially

created doctrine of obviousness-type double patenting as being unpatentable over claims 10, 14, 15 and 17-19 of U.S Patent No. 6,607,559; and claim 4 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 2 of U.S. Patent No. 6,805,716. In addition, claims 1 and 4 have been provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 7 and 11 of co-pending U.S. Patent Application No. 10/128,619; and claim 4 has been provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 2 of co-pending U.S. Patent Application No. 10/770,821. In response, Applicants enclose herewith a Terminal Disclaimer to overcome the references noted above.

In the Office Action, the Examiner also rejected claims 1-13 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,306,308 to Gross et al. Referring to FIGS. 1 and 2 thereof, Gross discloses an intervertebral disc having domes 3 and 4 that are located in a central area of the upper and lower surfaces 1 and 2. Each of the raised domes 3 and 4 is surrounded by a roof-shaped projection 5, 6, respectively. In response to the Examiner's rejection, and in order to more clearly describe the present invention, Applicants have amended the claims as indicated above.

Applicants respectfully assert that claim 1 is unanticipated by Gross because the cited reference neither discloses nor suggests an intervertebral spacer including a "spacer body having an upper surface with a center that is substantially flat." Clearly, Gross' top and bottom surfaces have a central area that includes a dome. This domed, central area is not "substantially flat" as required by claim 1. For these reasons, claim 1 is unanticipated by Gross and is otherwise allowable. Claims 2 and 3 are unanticipated,

alia, by virtue of their dependence from claim 1, which is unanticipated for the reasons set forth above.

Applicants respectfully assert that claim 4 is unanticipated by Gross because the cited reference neither discloses nor suggests an intervertebral spacer with a "spacer body having an upper surface and a lower surface, at least one of the upper and lower surfaces having a center that is substantially flat." As noted above, Gross' central area has a curved dome. This central area is not "substantially flat" as required by claim 4. For these reasons, claim 4 is unanticipated by Gross and is otherwise allowable. Claims 5-8 are unanticipated, *inter alia*, by virtue of their dependence from claim 4, which is unanticipated for the reasons set forth above.

Applicants respectfully assert that claim 9 is unanticipated by Gross because the cited reference neither discloses nor suggests an intervertebral implant including a "spacer body having an upper surface and a lower surface, at least one of the upper and lower surfaces having a center that is substantially flat." Claims 10-13 are unanticipated, *inter alia*, by virtue by their dependence from claim 9, which is unanticipated for the reasons set forth above.

As it is believed that all of the rejections set forth in the Office Action have been fully met, favorable reconsideration and allowance are earnestly solicited.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he telephone Applicants' attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested Amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: August 4, 2005

Respectfully submitted,

By Michael J. Doherty

Michael J. Doherty

Registration No.: 40,592

LERNER, DAVID, LITTBENBERG,

KRUMHOLZ & MENTLIK, LLP

600 South Avenue West

Westfield, New Jersey 07090

(908) 654-5000

Attorney for Applicants

585140\_1.DOC